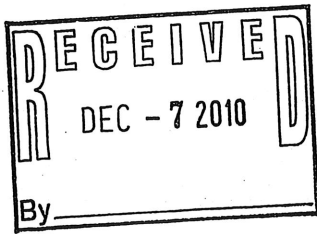


City of Takoma Park, Maryland



741

MUNICIPAL BUILDING
7500 MAPLE AVENUE
TAKOMA PARK, MD 20912

CITY OF TAKOMA PARK, MARYLAND
COMMISSION ON LANDLORD-TENANT AFFAIRS

Verelett Allen
1100 Linden Avenue, #103
Takoma Park, MD 20912

Ron Walker
1212 Myrtle Avenue, #202
Takoma Park, MD 20912

Ruthie Carroll
1212 Myrtle Avenue, #101
Takoma Park, MD 20912

Adriane Allen
7105 New Hampshire Avenue, #102
Takoma Park, MD 20912

Yolanda Gaskins
1102 Linden Avenue, #104
Takoma Park, MD 20912

Vickie B. Booker
1106 Linden Avenue, #202
Takoma Park, MD 20912

Lawrence Tucker
1100 Linden Avenue, #104
Takoma Park, MD 20912

Meghan Howard
1200 Myrtle Avenue, #201
Takoma Park, MD 20912

and

Richelle Charles
1108 Linden Avenue, #202
Takoma Park, MD 20912

Tenants,

v.

COLTA Case Nos. 2010-10T,
11T, 12T, 13T, 14T, 15T, 16T,
17T & 18T

Hillwood Manor Apartments
Joint Venture, LLP and its agent,
CSB Associates Management Corporation
P.O. Box 647
Riverdale, MD 20738

Landlord.

OPINION AND ORDER

I. INTRODUCTION.

From May 20, 2010, through July 7, 2010, nine tenants of the apartment complex known as the Hillwood Manor Apartments ("Property") located in the City of Takoma Park, Maryland, filed Complaints with the City of Takoma Park, Commission on Landlord-Tenant Affairs ("COLTA" or "Commission") against the owner of the Property, Hillwood Manor Joint Venture, LLP ("HMJV"), and the owner's managing agent, CSB Associates Management Corporation ("CSB") (collectively, "Landlord"). These Complaints were docketed as COLTA Case Nos. 10-10T through 10-18T.

The Tenants' Complaints alleged that the Landlord was charging monthly rents that were higher than the rent amount allowed for their units by the City's rent stabilization law. As relief, the Tenants requested that the rents be reduced to the legal amount and requested reimbursement of the rent overcharges. The Landlord responded to the Complaints in writing by requesting the dismissal of the Complaints because of the pending bankruptcy of the Owner of the Property, Hillwood Manor

Joint Venture, LLP, asserting that the Owner's agent, CSB Associates Management Corporation, performed only ministerial acts, and asserting that the Owner did not charge illegal rents.

The Commission has jurisdiction over this matter pursuant to Section 6.24.020 of the *Takoma Park Code* (unless otherwise specifically stated, all statutory references are to the *Takoma Park Code*). The Commission consolidated these Complaints for a hearing. In accordance with Section 6.24.080, the Commission held a public hearing on the Tenants' consolidated Complaints on September 29, 2010. All of the Tenants except one, Lawrence Tucker, were present at the hearing. Robert Stolworthy, Esq., represented the Tenants present at the hearing. Jean Kerr, a Housing Specialist in the City of Takoma Park Office on Landlord-Tenant Affairs also testified. John Barr, Esq., represented the Landlord. The Tenants, as the complaining parties, have the burden of proof by a preponderance of the evidence. Section 6.24.080(J).

II. APPLICABLE LAW.

Section 6.16.160 prohibits landlords from imposing an illegal rent.¹ Under the City's rent stabilization law, landlords must file an Annual Rent Report with the City stating the rents the landlord charged for each unit for the preceding year. Section 6.20.080. Landlords may increase the rent for each unit once a year pursuant to the City's Annual Rent Stabilization Allowance, which is calculated based on the Consumer Price Index. Section 6.20.060. In addition, landlords may obtain permission to further increase the rent by filing a Rent Increase Petition that demonstrates that the landlord's net operating income from a property has decreased. Section 6.20.090. Landlords who do not implement an Annual Rent Stabilization Allowance increase for a rental unit within one year must

¹ Section 6.04.030 defines "landlord" as "any person who is the owner, the owner's agent, or a lessor or a sublessor of the rental unit or rental facility and, in addition, shall mean any person authorized to exercise any aspect of the management of the rental facility, except those persons engaged solely in custodial and maintenance functions."

record the unused rent increase on the Annual Rent Report and may not implement the unused rent increase until the unit becomes vacant. Section 6.20.070.² When a unit with unused rent increase becomes vacant, the landlord may implement the rent increases by increasing the rent to the maximum allowable rent as reported in the Annual Rent Report. Id.

Tenants must file illegal rent complaints within three years of the date of the occurrence.

Section 6.24.060(B).

III. PRELIMINARY MATTERS.

The Owner of the Property, HMJV, filed a Petition for Bankruptcy in the United States Bankruptcy Court for the District of Maryland on May 27, 2010. As a result of that filing and the resultant automatic stay in bankruptcy that precludes the prosecution of actions against HMJV, the Commission stayed the proceeding as to HMJV. John Barr, who stated that he represented both HMJV and CSB at the hearing, argued that the bankruptcy court has sole jurisdiction over this proceeding. Mr. Barr also argued that CSB should not be held responsible for its actions with respect to the Tenants' Complaints because it was acting solely as the agent for HMJV. Mr. Barr did not cite any legal authority in support of either argument.

Because CSB did not file a bankruptcy petition, the Commission finds that the automatic stay in bankruptcy is not applicable to CSB. The Commission also rejects Mr. Barr's assertion that CSB cannot be held liable for its conduct because it was acting as an agent for and solely at the direction of HMJV. First, the *Takoma Park Code* specifically prohibits rental property owners *and their agents* from violating the City's Rent Stabilization Ordinance and specifically authorizes the Commission to

² A landlord wishing to implement unused Annual Rent Stabilization Allowance increases that predate the 1992 enactment of the Annual Rent Report requirement must first submit documentation to the Department of Housing and Community Development proving that it did not implement those increases.

order property owners *and their agents* that collect illegal rents to reimburse the tenants for the rent overcharges. Second, the Commission is not aware of any legal authority that supports the proposition that an agent may avoid liability for its own conduct because its conduct was directed by a principal. Rather, principals and agents generally are jointly and severally liable for the wrongful acts of an agent performed within the scope of the agency. Third, the Landlord did not present any evidence regarding which entity was responsible for establishing the rents for the Property. Fourth, although not necessary for our decision on this issue, the Commission notes that the leases between the Tenants and the Landlord (1) fail properly to identify HMJV as a limited liability partnership and CSB as a corporation, referring to them as "Hillwood Manor" and "CSB Management Assoc. Management," respectively; (2) identify "Hillwood Manor" as the "agent for [the] Landlord"; and (3) identify "CSB Management Assoc. Management" as the "Landlord/Owner or Landlord/Agent." *See, e.g.,* Exhibits 2A, 3A, and 4A. Accordingly, the Commission finds that CSB may be held liable for any illegal rents charged to the Tenants that are parties to this proceeding.

IV. EVIDENTIARY AND HEARING SUMMARY.

As discussed in detail in the discussion of each Tenant's rent, the Tenants' leases, the notices of rent increases provided by the Landlord to the Tenants and the records documenting the Tenants' payment of their rent demonstrate that the Landlord was charging several of the Tenants rents in excess of the rents it reported on its certified Annual Rent Reports from 2005 through 2007 and that the Landlord began accurately reporting the rents it was charging the Tenants in its 2008 Annual Rent Report.

Included in the record before the Commission were the Annual Rent Reports for the Property for the years 2005 through 2009, Exhibits 14-18, and the Annual Rent Stabilization Allowance for the

years 1981 through 2011, Exhibit 13. At the hearing, the Tenants sought to introduce the 1991 Annual Rent Report for the Property as evidence. As explained below, the Commission declines to admit the 1991 Report into evidence.

Housing Specialist Jean Kerr calculated the legal rents for the Apartments at the commencement of each Tenant's tenancy and notified the Landlord of the legal rents she calculated in letters transmitting the Complaints. Exhibits 2B, 3B, 4B, 5B, 6B, 7B, 8B, 9B, and 10E. Ms. Kerr testified that she calculated the legal rents for each apartment by first establishing a base legal rent by looking to the rents reported in the Landlord's Annual Rent Reports and then applying the Annual Rent Stabilization Allowance to the base legal rent to calculate the legal rent for the unit in each subsequent year. Ms. Kerr testified that in some cases, she used the rents reported in the Landlord's 2005 Annual Rent Report to calculate the base legal rent and that in other cases, where there appeared to be a year-over-year increase in excess of the Annual Rent Stabilization Allowance, she looked to earlier Annual Rent Reports. Ms. Kerr did not explain why she primarily used the 2005 Annual Rent Report.

Counsel for the Tenants, Robert Stolworthy, argued that the Commission generally should determine legal rents by using the maximum allowable rents reported by the Landlord in its 2007 Annual Rent Report as the base legal rent and then applying the Annual Rent Stabilization Allowance to calculate the legal rents for subsequent years, but that in the cases of Vicki Booker, Lawrence Tucker, and Yolanda Gaskins, the Commission should use the rent reported by the Landlord in its 1991 Rent Report as the base legal rent. Mr. Stolworthy explained that the Tenants' election of a specific base year for purposes of calculating the legal rent for their individual units was dictated by which year provided the Tenant with the greatest award of damages. He argued that the Commission

has the authority to use any rent certified by the Landlord in its Annual Rent Reports as the base legal rent because the Landlord was responsible for filing the inaccurate Reports.

Mr. Stolworthy submitted the Landlord's 1991 Annual Rent Report ("1991 Report") to the Commission during the hearing and asked that it be admitted into evidence and relied upon by the Commission to calculate the legal rents for Ms. Booker, Mr. Tucker, and Ms. Gaskins. Counsel for the Landlord, John Barr, first objected to the admission of the 1991 Report but then stipulated that the Commission could take administrative notice of the report because it is a record of the City of Takoma Park. Mr. Stolworthy argued that if the Commission does not use the 1991 Report to calculate the base legal rent, then it should use the 2007 Report to calculate the base legal rent for each Tenant's unit.

The Commission declines to admit the 1991 Report into evidence. The Commission finds that the absence of the 1991 Rent Report from the record prior to the hearing deprived the Landlord from considering and addressing any factual issues relating to the Report.

Counsel for the Landlord argued that the Commission should use the rents the Landlord reported in its 2007 Annual Rent Report to calculate the base legal rents. He argued that 2007 should be used as the base year because the Tenants had taken the position that the 2007 should be used, 2007 is within the three-year statute of limitations, and because 2007 is a statutorily authorized base year.³

The Landlord and the Tenants stipulated that each time the Landlord increased the actual rent

³ The Code does not mandate the use of a specific base year to calculate the legal rent for a rental unit. The only reference in the *Code* to a base year relates to the calculation of Fair Return Rent Increases. §6.20.050 (authorizing landlords to choose 1979, 1987, 1990, or 2000 as a base year for the purpose of determining whether the landlord requires a rent increase to maintain its inflation adjusted net operating income).

that it charged the Tenants, the percentage increase corresponded to the Annual Rent Stabilization Allowance in effect at the time of the increase. The Landlord did not present evidence at the hearing.

A discussion of the evidence relating to each Tenant follows.

Verelett Allen

Verelett Allen entered into a one-year lease for 1100 Linden Avenue, #103 commencing on September 1, 2007. Exhibit 2A. The lease required her to pay monthly rent of \$890.00. Exhibit 2A. She moved into the Apartment on August 18, 2007, and paid \$420.00 for August 18-August 31, 2007. Exhibit 2A. The Landlord increased the monthly rent for her Apartment to \$932.00 on September 1, 2008. Exhibit 2E. She submitted documentation of her rent payments. Exhibit 2F. Ms. Allen filed her Complaint on May 20, 2010.

On its 2007 Annual Rent Report, the Landlord stated that the maximum allowable monthly rent for Ms. Allen's Apartment was \$645.20 between July 1, 2006, and June 30, 2007. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2007, through June 30, 2008 was 2.5%. Exhibit 13. Applying the 2.5% allowance results in a legal rent of \$661.33 for Ms. Allen's Apartment from August 18, 2007, through August 31, 2008. The Annual Rent Stabilization Allowance for July 1, 2008 through June 30, 2009 was 4.7%. Exhibit 13. Applying the 4.7% allowance results in a legal rent of \$692.41 for Ms. Allen's Apartment from September 1, 2008, through August 31, 2009. The Annual Rent Stabilization Allowance for July 1, 2009 through June 30, 2010 was 0.4%. Exhibit 13. Applying the 0.4% allowance results in a legal rent of \$695.18 for Ms. Allen's Apartment from September 1, 2009, through August 31, 2010. The Annual Rent Stabilization Allowance for July 1, 2010 through June 30, 2011 was 2.3%. Exhibit 13. Applying the 2.3% allowance results in a legal rent of \$711.17 for Ms. Allen's Apartment from September 1, 2010, through August 31, 2011.

Ron Walker

Ron Walker entered into a one-year lease for 1212 Myrtle Ave., #202, commencing on July 1, 2009. Exhibit 3A. The lease required him to pay monthly rent of \$840.00. Exhibit 3A. He submitted documentation of his rent payments. Exhibit 3F. He filed his Complaint on May 20, 2010. Exhibit 3.

On its 2007 Annual Rent Report, the Landlord stated that the monthly rent for Mr. Walker's Apartment was \$649.44 between July 1, 2006, and June 30, 2007. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2007, through June 30, 2008 was 2.5%. Exhibit 13. Applying the 2.5% allowance results in a legal rent of \$665.68 for Mr. Walker's Apartment from July 1, 2007, through June 30, 2008. The Annual Rent Stabilization Allowance for July 1, 2008 through June 30, 2009 was 4.7%. Exhibit 13. Applying the 4.7% allowance results in a legal rent of \$696.97 for his Apartment from July 1, 2008, through June 30, 2009. The Annual Rent Stabilization Allowance for July 1, 2009 through June 30, 2010 was 0.4%. Exhibit 13. Applying the 0.4% allowance results in a legal rent of \$699.76 for his Apartment from July 1, 2009, through June 30, 2010. The Annual Rent Stabilization Allowance for July 1, 2010 through June 30, 2011 was 2.3%. Exhibit 13. Applying the 2.3% allowance results in a legal rent of \$715.85 for his Apartment from July 1, 2010, through June 30, 2011.

Meghan Howard

Meghan Howard entered into a one-year lease for 1200 Myrtle Avenue, #201, commencing on February 1, 2005. Exhibit 4A. The lease required her to pay monthly rent of \$800.00. Exhibit 4A. The Landlord increased the monthly rent for her Apartment to \$815.00 on February 1, 2006, to \$838.00 on February 1, 2007, to \$859.00 on February 1, 2008, and to \$899 on February 1, 2009.

Exhibit 4. She submitted documentation of her rent payments. Exhibit 4F. She filed her Complaint on May 26, 2010. Exhibit 4.

On its 2007 Annual Rent Report, the Landlord stated that the maximum allowable monthly rent for Ms. Howard's Apartment was \$676.88 between July 1, 2006, and June 30, 2007. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2007, through June 30, 2008, was 2.5%.

Exhibit 13. Applying the 2.5% allowance results in a legal rent of \$693.80 for her Apartment from February 1, 2008, through January 31, 2009. The Annual Rent Stabilization Allowance for July 1, 2008 through June 30, 2009 was 4.7%. Exhibit 13. Applying the 4.7% allowance results in a legal rent of \$726.41 for her Apartment from February 1, 2009, through January 31, 2010. The Annual Rent Stabilization Allowance for July 1, 2009 through June 30, 2010 was 0.4%. Exhibit 13.

Applying the 0.4% allowance results in a legal rent of \$729.32 for her Apartment from February 1, 2010, through January 31, 2011.

Vicki Booker

Vicki Booker entered into a one-year lease for 1106 Linden Ave., #202 commencing on October 1, 2007. Exhibit 5A. The lease required her to pay monthly rent of \$825.00. Exhibit 5A. The Landlord increased the monthly rent for her Apartment to \$864.00 on October 1, 2008, and to \$867.00 on October 1, 2009. Exhibit 5D. She submitted documentation of her rent payments. Exhibit 5F. She filed her Complaint on May 27, 2010. Exhibit 5.

On its 2007 Annual Rent Report, the Landlord stated that the monthly rent for Ms. Booker's Apartment was \$816.28 between July 1, 2006, and June 30, 2007. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2007, through June 30, 2008 was 2.5%. Exhibit 13. Applying the 2.5% allowance results in a legal rent of \$836.69 for her Apartment from October 1, 2007, through

September 30, 2008. The Annual Rent Stabilization Allowance for July 1, 2008, through June 30, 2009 was 4.7%. Exhibit 13. Applying the 4.7% allowance results in a legal rent of \$876.01 for her Apartment from October 1, 2008, through September 30, 2009. The Annual Rent Stabilization Allowance for July 1, 2009 through June 30, 2010 was 0.4%. Exhibit 13. Applying the 0.4% allowance results in a legal rent of \$879.51 for her Apartment from October 1, 2009, through September 30, 2010. The Annual Rent Stabilization Allowance for July 1, 2010, through June 30, 2011, was 2.3%. Exhibit 13. Applying the 2.3% allowance results in a maximum allowable rent of \$879.44 for her Apartment from October 1, 2010, through September 30, 2011.

Ruthie Carroll

Ruthie Carroll entered into a one-year lease for 1212 Myrtle Ave., #101, commencing on August 1, 2005. Exhibit 6A. The lease required her to pay monthly rent of \$825.00. Exhibit 6A. The Landlord increased the monthly rent for her Apartment to \$846.00 on August 1, 2006, to \$862.00 on August 1, 2007, to \$903.00 on August 1, 2008, and to \$909.00 on August 1, 2009. Exhibits 6, and 17-18. She submitted documentation of her rent payments. Exhibit 6D. She filed her Complaint on May 27, 2010. Exhibit 6.

On its 2007 Annual Rent Report, the Landlord stated that the monthly rent for Ms. Carroll's Apartment was \$576.56 between July 1, 2006, and June 30, 2007. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2007, through June 30, 2008 was 2.5%. Exhibit 13. Applying the 2.5% allowance results in a legal rent of \$590.97 for her Apartment from August 1, 2007, through July 31, 2008. The Annual Rent Stabilization Allowance for July 1, 2008 through June 30, 2009 was 4.7%. Exhibit 13. Applying the 4.7% allowance results in a legal rent of \$618.75 for her Apartment from August 1, 2008, through July 31, 2009. The Annual Rent Stabilization Allowance for July 1,

2009 through June 30, 2010 was 0.4%. Exhibit 13. Applying the 0.4% allowance results in a legal rent of \$621.23 for her Apartment from August 1, 2009, through July 31, 2010. The Annual Rent Stabilization Allowance for July 1, 2010, through June 30, 2011, was 2.3%. Exhibit 13. Applying the 2.3% allowance results in a maximum allowable rent of \$635.52 for her Apartment from August 1, 2010, through July 31, 2011.

Ms. Carroll testified that she vacated her Apartment on July 8 or 9, 2010, and that the last rent payment she made to the Landlord was for her April 2010 rent.

Adriane Allen

Adriane Allen entered into a one-year lease for 7105 New Hampshire Ave., #102, commencing on April 1, 2006. Exhibit 7A. The lease required her to pay monthly rent of \$825.00. Exhibit 7A. The Landlord increased the monthly rent for her Apartment to \$848.00 on April 1, 2007, to \$868.00 on April 1, 2008, to \$909.00 on April 1, 2009, and to \$912.00 on June 1, 2010. Exhibit 7D-7F and 18. She submitted documentation of her rent payments. Exhibit 7J-7N. She filed her Complaint on May 27, 2010. Exhibit 7.

On its 2007 Annual Rent Report, the Landlord stated that the monthly rent for Ms. Allen's Apartment was \$812.06 between July 1, 2006, and June 30, 2007. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2007, through June 30, 2008 was 2.5%. Exhibit 13. Applying the 2.5% allowance results in a legal rent of \$832.36 for her Apartment from April 1, 2008, through March 31, 2009. The Annual Rent Stabilization Allowance for July 1, 2008 through June 30, 2009 was 4.7%. Exhibit 13. Applying the 4.7% allowance results in a legal rent of \$871.58 for her Apartment from April 1, 2009, through March 31, 2010. The Annual Rent Stabilization Allowance for July 1, 2009 through June 30, 2010 was 0.4%. Exhibit 13. Applying the 0.4% allowance results

in a legal rent of \$875.07 for her Apartment from April 1, 2010, through March 31, 2011.

Yolanda Gaskins

Yolanda Gaskins entered into a one-year lease for 1102 Linden Ave., #104, commencing on June 1, 2003. Exhibit 8A. The lease required her to pay monthly rent of \$760.00. Exhibit 8A. The Landlord increased the monthly rent for her Apartment to \$827.00 on June 1, 2007, to \$848.00 on June 1, 2008, and to \$888.00 on June 1, 2009. Exhibits 8H-8J and 17-19. She submitted documentation of her rent payments. Exhibit 8K. She filed her Complaint on June 10, 2010. Exhibit 8.

On its 2007 Annual Rent Report, the Landlord stated that the monthly rent for Ms. Gaskins's Apartment was \$787.78 between July 1, 2006, and June 30, 2007. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2007, through June 30, 2008 was 2.5%. Exhibit 13. Applying the 2.5% allowance results in a legal rent of \$807.47 for her Apartment from June 1, 2008, through May 30, 2009. The Annual Rent Stabilization Allowance for July 1, 2008 through June 30, 2009 was 4.7%. Exhibit 13. Applying the 4.7% allowance results in a legal rent of \$845.42 for her Apartment from June 1, 2009, through May 30, 2010. The Annual Rent Stabilization Allowance for July 1, 2009 through June 30, 2010 was 0.4%. Exhibit 13. Applying the 0.4% allowance results in a legal rent of \$848.80 for her Apartment from June 1, 2010, through May 30, 2011.

Richelle Charles

Richelle Charles entered into a one-year lease for 1108 Linden Ave., #202, commencing on September 1, 2007. Exhibit 10A. The lease required her to pay monthly rent of \$850.00. Exhibit 10A. She moved into the Apartment on August 18, 2007, and paid \$392.00 for August 18-August 31, 2007. Exhibit 10A. The Landlord increased the monthly rent for her Apartment to \$890.00 on

September 1, 2008, and to \$910.00 on October 1, 2010. Exhibit 10C. She submitted documentation of her rent payments. Exhibit 10D. She filed her Complaint on July 7, 2010. Exhibit 10.

On its 2007 Annual Rent Report, the Landlord stated that the monthly rent for Ms. Charles's Apartment was \$705.40 between July 1, 2006, and June 30, 2007. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2007, through June 30, 2008 was 2.5%. Exhibit 13. Applying the 2.5% allowance results in a legal rent of \$723.04 for her Apartment from August 18, 2007, through August 31, 2008. The Annual Rent Stabilization Allowance for July 1, 2008 through June 30, 2009 was 4.7%. Exhibit 13. Applying the 4.7% allowance results in a legal rent of \$757.02 for her Apartment from September 1, 2008, through August 31, 2009. The Annual Rent Stabilization Allowance for July 1, 2009 through June 30, 2010 was 0.4%. Exhibit 13. Applying the 0.4% allowance results in a legal rent of \$760.05 for her Apartment from September 1, 2009, through August 31, 2010. The Annual Rent Stabilization Allowance for July 1, 2010, through June 30, 2011, was 2.3%. Exhibit 13. Applying the 2.3% allowance results in a legal rent of \$777.53 for her Apartment from September 1, 2010, through August 31, 2011.

Lawrence Tucker

As noted above, Lawrence Tucker, 1100 Linden Ave, #104, did not appear at the hearing. The Landlord moved that the Commission dismiss Mr. Tucker's Complaint. The Commission issued a Show Cause Order dated October 6, 2010, requiring Mr. Tucker to show cause in writing why his case should not be dismissed. Mr. Tucker filed a response to the Show Cause Order dated October 15, 2010, stating that he had to work at the time of the hearing. He requested that the Commission rule on his Complaint based upon the documentation in the record.

The Commission is unable to rule on Mr. Tucker's Complaint based on the documentation in

the record because the Landlord did not have the opportunity to cross-examine Mr. Tucker about his claims.

Commission Rule 11(1)(a) requires a party that wishes to postpone a hearing because of a conflict with their work schedule to file a Motion for Continuance at least ten days before the hearing and to include documentation in support of the request, such as a letter from their employer, with the motion. In this case, the Commission issued the Hearing Notice on September 3, 2010, and the Tenant never filed a motion for continuance or otherwise contacted the Commission to indicate that he would not be attending the hearing. Accordingly, the Commission finds that dismissal of Mr. Tucker's Complaint is warranted.

V. Findings of Fact and Conclusions of Law.

1. The Commission finds that Verelett Allen entered into a one-year tenancy commencing on September 1, 2007. Ms. Allen's tenancy converted to a month-to-month tenancy by operation of law on September 1, 2008.
2. The Commission finds that Ron Walker entered into a one-year tenancy commencing on July 1, 2009. His tenancy converted to a month-to-month tenancy by operation of law on July 1, 2010.
3. The Commission finds that Meghan Howard entered into a one-year tenancy commencing on February 1, 2005. Her tenancy converted to a month-to-month tenancy by operation of law on February 1, 2006.
4. The Commission finds that Vicki Booker entered into a one-year tenancy commencing on October 1, 2007. Her tenancy converted to a month-to-month tenancy by operation of law on October 1, 2008.
5. The Commission finds that Ruthie Carroll entered into a one-year tenancy commencing on

August 1, 2005. Her tenancy converted to a month-to-month tenancy by operation of law on August 1, 2006. Ms. Carroll's tenancy terminated in July 2010.

6. The Commission finds that Adriane Allen entered into a one-year tenancy commencing on April 1, 2006. Her tenancy converted to a month-to-month tenancy by operation of law on April 1, 2007.

7. The Commission finds that Yolanda Gaskins entered into a one-year tenancy commencing on June 1, 2003. Her tenancy converted to a month-to-month tenancy by operation of law on June 1, 2004.

8. The Commission finds that Richelle Charles entered into a one-year tenancy commencing on September 1, 2007. Her tenancy converted to a month-to-month tenancy by operation of law on September 1, 2008.

9. The Commission finds that using the maximum allowable rents that the Landlord reported for each Apartment in its 2007 Annual Rent Report to determine the base legal rent for each Apartment and then applying the Annual Rent Stabilization Allowance for each subsequent year to be the appropriate method of calculating the legal rents for all of the Tenants in this consolidated proceeding. The Commission notes that the lawful rent for an apartment in any given year is dependent upon the rent reported by the landlord for the prior year, the Annual Rent Stabilization Allowance for that year, any unused rent increases reported by the landlord, and whether a tenant has vacated the apartment during the year. The record reveals that the Landlord was charging the majority of the Tenants in this proceeding rents that significantly exceeded the rents it certified as accurate in its 2005-2007 Annual Rent Reports, and began reporting the rents it actually charged the Tenants in 2008. The Landlord's counsel, in his written responses to the Complaints, asserted that it

was charging the Tenants the rent stated in their leases, and that the rent increases it imposed upon the Tenants did not exceed the percentage increase authorized by the City's Annual Rent Stabilization Allowance. See, e.g., Exhibits 2G, 3G, 4G. However, at the hearing, the Landlord stipulated to the use of the rents it reported in its 2007 Annual Rent Report to establish the base legal rents for the units at issue in this proceeding. The Landlord did not address the discrepancy between the reported rents and the actual rents during the 2005 through 2007 reporting periods.

If the Landlord is arguing that the rents it decided to charge the Tenants at the commencement of their Tenancies were legal and established the base legal rent for their units, the Commission rejects that argument.⁴ The Commission holds that the Landlord is estopped from asserting that the lawful rent for any unit in any year is greater than the rents that it has certified as accurate in its Annual Rent Reports. The Commission agrees with the Tenants' argument that they are entitled to decide which Annual Rent Report from which to establish the base rent for their unit, at least absent any evidence that the Report is inappropriate. However, the Commission is bound to consider only the evidence in the record, and the record does not contain Annual Rent Reports of the Landlord for years other than the years 2005 through 2009. In light of the fact that the Tenants' have taken the position that the Commission, if it were to decline to admit the Landlord's 1991 Report, should use the 2007 Report, the fact that the Landlord also argued in favor of utilizing the 2007 Report, and the fact that the 2007 Report is included in the record, the Commission will determine the legal rents for the Tenants' apartments by taking the maximum allowable rent for each apartment reported by the

⁴ This argument would be correct if the City's Rent Stabilization Ordinance, as some rent stabilization schemes do, provided for "vacancy decontrol," which authorizes landlords to increase the rent for a unit to the current market rate each time a unit becomes vacant. However, the Takoma Park Code permits landlords to increase the rent of vacant units only by the dollar amount of any authorized rent increases not charged to the previous tenants of the unit. §§ 6.20.060-.070.

Landlord in its 2007 Annual Rent Report and applying the City's Annual Rent Stabilization Allowance in subsequent years.

Applying this methodology to the evidence in this case, the Commission finds that the Tenants are entitled to the following rental refunds for through November 2010:

1100 Linden Avenue, #103, Takoma Park, MD
Tenant: Verelett Allen

<u>Time Period</u>	<u>Monthly Overcharge</u>	<u>Total Overcharge (# of months x monthly overcharge)</u>
August 18, 2007 - August 31, 2008 (12.45 months)	\$228.67	\$2,846.94
September 1, 2008- August 31, 2009	239.59	2,875.08
September 1, 2009 - August 31, 2010	236.82	2,841.84
September 1, 2010 - November 30, 2010	220.83	<u>662.49</u>
TOTAL RENT REFUND DUE =		\$9,226.35

1212 Linden Avenue, #202, Takoma Park, MD
Tenant: Ron Walker

<u>Time Period</u>	<u>Monthly Overcharge</u>	<u>Total Overcharge (# of months x monthly overcharge)</u>
July 1, 2009 - June 30, 2010	\$140.24	\$1,682.88
July 1, 2010 - November 30, 2010	124.15	<u>620.75</u>
TOTAL RENT REFUND DUE =		\$2,303.63

1200 Myrtle Avenue, #201, Takoma Park, MD

Tenant: Meghan Howard

<u>Time Period</u>	<u>Monthly Overcharge</u>	<u>Total Overcharge (# of months x monthly overcharge)</u>
June 1, 2007 - January 31, 2008	\$161.12	\$1,288.96
February 1, 2008- January 31, 2009	165.20	1,982.40
February 1, 2009 - January 31, 2010	172.59	2,071.08
February 1, 2010 - November 30, 2010	166.68	<u>1,666.80</u>

TOTAL RENT REFUND DUE = \$7,009.24

1106 Linden Avenue, #202, Takoma Park, MD

Tenant: Vicki Booker

<u>Time Period</u>	<u>Monthly Overcharge</u>	<u>Total Overcharge (# of months x monthly overcharge)</u>
October 1, 2007 - September 30, 2008	\$0.00	\$0.00
October 1, 2008 - September 30, 2009	0.00	0.00
October 1, 2009 - September 30, 2010	0.00	0.00
September 30, 2010 - November 30, 2010	0.00	<u>0.00</u>

TOTAL RENT REFUND DUE = \$0.00

1212 Myrtle Avenue, #101, Takoma Park, MD
Tenant: Ruthie Carroll

<u>Time Period</u>	<u>Monthly Overcharge</u>	<u>Total Overcharge (# of months x monthly overcharge)</u>
June 1, 2007 - July 30, 2007	\$248.44	\$496.88
August 1, 2007 - July 30, 2008	255.03	3,060.36
August 1, 2008 - July 30, 2009	284.25	3,411.00
August 1, 2009 - April 30, 2010	287.77	<u>2,589.93</u>

TOTAL RENT REFUND DUE = \$9,558.17

7105 New Hampshire Avenue, #102, Takoma Park, MD
Tenant: Adriane Allen

<u>Time Period</u>	<u>Monthly Overcharge</u>	<u>Total Overcharge (# of months x monthly overcharge)</u>
June 1, 2007 - March 31, 2008	\$35.94	\$359.40
April 1, 2008 - March 31, 2009	35.64	427.68
April 1, 2009 - March 31, 2010	37.42	449.04
April 1, 2010 - May 31, 2010	33.93	67.86
June 1, 2010 - November 30, 2010	36.93	<u>221.58</u>

TOTAL RENT REFUND DUE = \$1,525.56

1102 Linden Avenue, #104, Takoma Park, MD

Tenant: Yolanda Gaskins

<u>Time Period</u>	<u>Monthly Overcharge</u>	<u>Total Overcharge (# of months x monthly overcharge)</u>
July 1, 2007 - May 30, 2008	\$39.22	\$431.42
June 1, 2008 - May 30, 2009	40.53	486.36
June 1, 2009 - May 30, 2010	42.58	510.96
June 1, 2010 - November 30, 2010	39.20	<u>235.20</u>

TOTAL RENT REFUND DUE = \$1,663.94

1108 Linden Avenue, #202, Takoma Park, MD

Tenant: Richelle Charles

<u>Time Period</u>	<u>Monthly Overcharge</u>	<u>Total Overcharge (# of months x monthly overcharge)</u>
August 18, 2007 - August 31, 2008 (12.45 months)	\$126.96	\$1,580.65
September 1, 2008- August 31, 2009	132.98	1,595.76
September 1, 2009 - August 31, 2010	129.95	1,559.40
September 1, 2010 - September 30, 2010	112.47	112.47
October 1, 2010 - November 30, 2010	132.47	<u>264.94</u>

TOTAL RENT REFUND DUE = \$5,113.22

VI. ORDER.

Upon consideration of the record in this case, it is this 3rd day of December 2010, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the lawful rent for 1100 Linden Avenue, #103, is \$711.17 per month; and

ORDERED, that CSB Associates Management Corporation shall pay to Verelett Allen a refund of \$9,226.35 for charging an illegal rent; and

ORDERED, that the lawful rent for 1212 Myrtle Avenue, #202, is \$715.85 per month; and

ORDERED, that CSB Associates Management Corporation shall pay to Ron Walker a refund of \$2,303.63 for charging an illegal rent; and

ORDERED, that the lawful rent for 1200 Myrtle Avenue, #201, is \$729.32 per month; and

ORDERED, that CSB Associates Management Corporation shall pay to Meghan Howard a refund of \$7,009.24 for charging an illegal rent; and

ORDERED, that the maximum allowable rent for 1212 Myrtle Avenue, #101, is \$635.52 per month; and

ORDERED, that CSB Associates Management Corporation shall pay to Ruthie Carroll a refund of \$9,558.17 for charging an illegal rent; and

ORDERED, that the legal rent for 7105 New Hampshire Avenue, #102, is \$875.07 per month; and

ORDERED, that CSB Associates Management Corporation shall pay to Adriane Allen a refund of \$1,525.56 for charging an illegal rent; and

ORDERED, that the lawful rent for 1102 Linden Avenue, #104, is \$848.80 per month; and

ORDERED, that CSB Associates Management Corporation shall pay to Yolanda Gaskins a

refund of \$1,663.94 for charging an illegal rent; and

ORDERED, that the lawful rent for 1108 Linden Avenue, #202, is \$777.53 per month; and

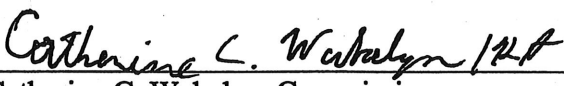
ORDERED, that CSB Associates Management Corporation shall pay to Richelle Charles a refund of \$5,113.22 for charging an illegal rent; and

ORDERED, that CSB Associates Management Corporation shall comply with this Order and pay the rent refund to the Tenants by December 5, 2010; and

ORDERED, that if CSB Associates Management Corporation does not pay the rent refund awarded to the Tenants by December 15, 2010, the award will accrue interest at the judgment rate of interest under the Courts and Judicial Proceedings Article of the *Annotated Code of Maryland*; and

ORDERED, that CSB Associates Management Corporation immediately shall cease and desist from charging or collecting rent in excess of the lawful amount established by this Order from Verelett Allen, Ron Walker, Meghan Howard, Ruthie Carroll, Adriane Allen, Yolanda Gaskins, and Richelle Charles; and

ORDERED, that the Complaint of Lawrence Tucker, Commission Case No. 10-16T, is dismissed.


Catherine C. Wakelyn, Commissioner


Robert Liebreich, Commissioner


Lauren Price, Commissioner

Notice of Appeal Rights

Any party aggrieved by a final Opinion and Order of the Commission on Landlord-Tenant Affairs may appeal to the Circuit Court of Montgomery County, Maryland, under the Court Rules governing judicial review of administrative agency decisions within thirty (30) calendar days from the date of the final Opinion and Order. The filing of a petition for judicial review will not stay a final Opinion and Order unless so ordered by a court of competent jurisdiction.

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